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17 J. ROBERT KILLIAN,) Case No. C12-5418-PSG
18 Plaintiff,)
19 vs.)
20 CITY OF MONTEREY, TIM SHELBY) JOINT CASE MANAGEMENT
in his official capacity as Chief of Police) STATEMENT
21 for the CITY OF MONTEREY,)
OFFICER KRIS RICHARDSON)
22 individually and in his official capacity) Date: December 18, 2012
as Police Officer for the CITY OF) Time: 2:00 p.m.
23 MONTEREY, OFFICER JOHN OLNEY) Judge: The Honorable Paul S. Grewal
individually and in his official capacity)
as Police Officer for the CITY OF)
24 MONTEREY, and DOES 1-25,) Action Filed: October 19, 2012
25 INCLUSIVE,)
26 Defendants.) Trial Date: None Set

1 Plaintiff J. ROBERT KILLIAN, Defendants CITY OF MONTEREY, TIM SHELBY,
2 KRIS RICHARDSON, and JOHN OLNEY jointly submit this Case Management Statement and
3 Proposed Order and request the Court to adopt it as its Case Management Order in this case:

4 **1. JURISDICTION AND SERVICE**

5 The basis for the Court's subject matter jurisdiction is 28 U.S.C. § 1331, as this civil
6 action arises under the constitution and laws of the United States based on Plaintiff's alleged
7 42 U.S.C. § 1983 claim.

8 **2. FACTS**

9 **A. Agreed Facts**

10 On February 4, 2011, Plaintiff was detained by Defendant Officer Richardson when he
11 was found parked in a red zone partially blocking a left turn lane, and participated in field
12 sobriety tests. Plaintiff was subsequently arrested for driving under the influence. Defendant
13 Officer Olney was present during portions of the detention and arrest.

14 **B. Factual Issue in Dispute**

15 The parties dispute whether Plaintiff displayed physical manifestations of a disability to
16 the Defendant Officers.

17 **3. LEGAL ISSUES**

18 **A. Plaintiffs:**

- 19 1) Whether Defendant Officers arrested Plaintiff without probable cause.
- 20 2) Whether Defendant Officers arrested Plaintiff with malice.
- 21 3) Whether Defendant CITY failed to accommodate Plaintiff's recognized
22 disability.
- 23 4) Whether Defendant CITY had a policy or practice authorizing violation of
24 Plaintiff's rights.
- 25 5) Whether Defendant SHELBY ratified Unconstitutional conduct by Defendant
26 Officers causing Plaintiff's damages.

1 B. Defendants:2 1) Whether Officers Richardson and Olney had reasonable suspicion to detain
3 and probable cause to arrest Plaintiff.4 2) Whether the City and Defendant Shelby permitted or created a departmental
5 policy that encouraged the disregard of constitutional rights by failing to adequately train
6 officers; and the legal measure of any damages.7 4. MOTIONS8 Defendants filed a motion to dismiss on November 28, 2012. The matter will be heard on
9 January 8, 2013. Plaintiff intends to file a statement of non-opposition to the motion.10 5. AMENDMENT OF PLEADINGS11 Defendants have filed a motion to dismiss Plaintiff's ADA claim under 42 U.S.C.
12 §12132, claims against the individually named Defendants, and Plaintiff's prayer for punitive
13 damages against the City.14 At this point, Plaintiffs do not intend to amend the complaint, unless or until discovery
15 yields additional evidence against Defendants not yet known to Plaintiff.16 6. EVIDENCE PRESERVATION17 Defendants' evidentiary materials relevant to the issues of this case are primarily
18 documentary and have been stored in a manner to ensure preservation. The parties have
19 reviewed the Guidelines Relating to the Discovery of Electronically Stored Information and have
20 met and conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and proportionate steps
21 taken to preserve evidence relevant to the issues reasonably relevant in this action.

22 Plaintiff has preserved evidence known to him.

23 7. DISCLOSURES24 Defendants have offered to produce relevant police reports and photographs related to the
25 incident, relevant parts of Officer Richardson's personnel file, and the internal affairs
26 investigation report, which was conducted in response to the incident, subject to a protective
27 order. Defendants have provided Plaintiffs' counsel a form of protective order.

1 Plaintiff will make his initial disclosures by the date of the Case Management Conference
2 in this matter.

3 **8. DISCOVERY/SCHEDULING**

4 Discovery in this case will not be sufficiently complex to warrant conducting discovery
5 in phases. The parties stipulate that each party may propound written interrogatories, requests
6 for admissions, and requests for production of documents in accordance with the Federal Rules
7 of Civil Procedure and Local Rules. The parties further stipulate that the number and length of
8 oral depositions, including expert witness depositions, will be conducted in accordance with
9 Federal Rule of Civil Procedure 30 and the Local Rules.

10 **9. CLASS ACTIONS**

11 Not Applicable.

12 **10. RELATED CASES**

13 There are no other related cases.

14 **11. RELIEF**

15 Plaintiff seeks general damages, special damages, punitive damages and attorneys fees.

16 **12. SETTLEMENT and ADR**

17 Defendants have agreed to participate in Early Neutral Evaluation. Plaintiff does not
18 agree to participate in Early Neutral Evaluation, but is willing to participate in Mediation.

19 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

20 Defendants consent to the magistrate for all purposes.

21 **14. OTHER REFERENCES**

22 This case is not suitable for reference to binding arbitration, a special master, or the
23 Judicial Panel or Multidistrict Litigation.

24 **15. NARROWING OF ISSUES**

25 Defendants feel the following issues may be narrowed by motions: 42 U.S.C. § 12132
26 claims against the individually named Defendants and Plaintiff's prayer for punitive damages
27 against the City. The parties do not wish to bifurcate any issues and/or defenses at this time;
28 however, the parties wish to reserve their rights to do so as the litigation progresses.

1 **16. EXPEDITED TRIAL PROCEDURE**

2 The parties do not agree to an expedited trial.

3 **17. SCHEDULING**

4 Non-expert Discovery Cut-off: August 16, 2013
5 Expert Designation and Reports Due: August 30, 2013
6 Expert Discovery Cut-Off: September 30, 2013
7 Last Day to File Dispositive Motions: October 25, 2013
8 Last Day for Dispositive Motion Hearing: November 29, 2013
9 Pre-Trial Conference: January 17, 2013
10 Trial: February 17, 2014

11 **18. TRIAL**

12 Jury trial. Estimated three to five days.

13 **19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

14 The City of Monterey is a government agency and exempt from disclosure under Local
15 Rule 3-16(a). Otherwise, the remaining Defendants will make a certification that no such
16 interested third party or person is known to Defendants.

17 Plaintiff knows of no such entities or persons.

18 **20. OTHER MATTERS**

19 None known.

20 Dated: December 11, 2012

21 LAW OFFICE OF JOHN L. BURRIS

22 By: /s/ Benjamin Nisembau
23 BENJAMIN NISENBAUM
24 Attorneys for Plaintiff J. ROBERT KILLIAN

25 Dated: December 11, 2012

26 LAW OFFICES OF VINCENT P. HURLEY
27 A Professional Corporation

28 By: /s/ J. Omar Rodriguez
29 J. OMAR RODRIGUEZ

30 Attorneys for Defendants CITY OF MONTEREY,
31 TIM SHELBY, OFFICER KRIS RICHARDSON,
32 and OFFICER JOHN OLNEY

CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order.

In addition the Court orders:

Plaintiff is ordered to serve a copy of this order on any party subsequently joined in this action.

Dated:

PAUL S. GREWAL
United States Magistrate Judge